

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:) ADMINISTRATIVE
) ORDER ON CONSENT
)
ABC COKE DIVISION)
THE DRUMMOND COMPANY)
BIRMINGHAM, ALABAMA) DOCKET NO. CWA-04-2014-4507(b)
)
PROCEEDING UNDER SECTION)
309(a) OF THE CLEAN WATER ACT,)
33 U.S.C. § 1319(a))
NPDES PERMIT NO. AL0003417)

ADMINISTRATIVE ORDER ON CONSENT

I. STATUTORY AUTHORITY

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(A) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(A), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, including Subpart I, published at 64 Fed. Reg. 40176 (July 23, 1999), and codified at 40 Code of Federal Regulations ("C.F.R.") Part 22.

2. The authority to take action under Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), is vested in the Administrator of the United States Environmental Protection Agency ("EPA"). The Administrator has delegated this authority to the Regional Administrator Region 4, who in turn has re-delegated this authority to the Director of the Water Protection Division, who in turn has delegated this authority to the Chief of the Clean Water Enforcement Branch of EPA Region 4 ("Complainant").

II. ALLEGATIONS

3. ABC Coke Division is a part of Drummond Company, Inc. ("Respondent"), which is a corporation duly organized and existing under the laws of the State of Alabama and is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this action, the Respondent owned and/or operated a Biological Treatment Facility ("BTF"), located in Jefferson County at Railroad Street in Birmingham, Alabama.

5. To accomplish the objectives of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes an NPDES Permit Program authorizing the EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants into navigable waters subject to specific terms and conditions. The EPA has granted the State of Alabama through the Department of Environmental Management ("ADEM") approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. The BTF is operating under NPDES Permit No. AL0003417 ("Permit"), issued on March 3, 2009, and was administratively continued on March 31, 2014.

8. The Permit authorizes discharge of treated process wastewater and stormwater from coke making operations through outfall DSN 001 and discharge of stormwater runoff from the coal and coke yard through outfall DSN 002. Monitoring requirements in the Permit applicable to DSN 002 require Respondent to monitor constituents that would indicate a discharge of any process related pollutants from the coal and coke yard.

9. On August 13-16, 2012, the EPA conducted a Compliance Evaluation Inspection ("CEI") of the BTF and the industrial site to evaluate the Respondent's compliance with the Permit and the CWA. The CEI identified deficiencies related to preservation methods used to analyze samples, Best Management Practice deficiencies related to the stormwater controls and four non-stormwater discharges draining to the stormwater retention pond, which captures the stormwater runoff ultimately discharging through outfall DSN002. EPA found that one of those discharges was not specifically included in the Permit, and the others were not discharging in accordance with the terms of the Permit.

10. On May 10, 2013, the EPA sent a Letter of Concern ("LOC"), issued under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to the Respondent regarding alleged deficiencies identified during the inspection. The LOC also alleged two ammonia nitrogen effluent limit exceedances for the period covering January 1, 2010, through December 31, 2012. The LOC requested information on corrective actions planned or taken to address the deficiencies and effluent limit exceedances.

11. On June 17, 2013, the Respondent provided a response to the LOC. The response addressed all of the deficiencies with the exception that it stated that the Respondent believed the NPDES application allowed for these types of non-stormwater discharges and that three

of these discharges were reflected as "miscellaneous" discharges in Respondent's application for the Permit. The fourth discharge reflected a release from a Jefferson County pipeline that has been repaired, such that the release has ceased.

12. On July 16, 2013, the EPA concluded its review of the LOC response and the Respondent's permit application and determined that Part V. of form 2F, which is entitled *Application for Permit to Discharge Storm Water Discharges Associated with Industrial Activity*, contains a certification that all non-stormwater discharges should be identified in either form 2C for discharge of wastewater or 2E for discharge of noncontact process water, and no such non-stormwater discharges are so identified on either of those forms.

13. Based on the above, EPA has determined that the Respondent has violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), in that the Respondent has discharged wastewater to a location not authorized by an NPDES permit. The EPA has determined that the Respondent has violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and the Permit, by failing to comply with Part I.A. and Part II.E.2.a of the Permit.

14. In addition, upon conducting a subsequent record review of Respondent's last three years of compliance history, EPA determined that Respondent violated its whole effluent toxicity ("WET") limit for September 2013. Therefore, the EPA determined that the Respondent has violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and the Permit, by failing to comply with Part I.A. of the Permit.

III. STIPULATIONS AND FINDINGS

15. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order ("CA/FO") will simultaneously commence and conclude this matter.

16. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out above and neither admits nor denies the factual allegations set out above.

17. Respondent hereby waives its right to contest the allegations set out above and its right to appeal the Final Order accompanying this Consent Agreement.

18. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CA/FO, and EPA is accepting such payment in full compromise, settlement and satisfaction of any and every civil penalty claim, demand, and cause of action set forth in this CA/FO. Moreover, said payment of the civil penalty shall not be construed as an admission of liability by Respondent.

19. By signing this CA/FO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response and statement. Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information.

20. The EPA reserves the right to assess and collect any and all civil penalties for any violation described herein to the extent that any information or certification provided by Respondent was materially false or inaccurate at the time such information or certification was provided to EPA.

21. Complainant and Respondent agree to settle this matter by their execution of this CA/FO. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of the CWA.

IV. PAYMENT

22. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and considering the nature of the violations and other relevant factors, the EPA has determined and Respondent has agreed in settlement and compromise that Twenty Thousand Five Hundred Fifty Dollars (\$20,550) is an appropriate civil penalty to settle this action.

23. Respondent shall submit payment of the penalty specified in the preceding paragraph via a cashier's or certified check, payable to the order of "Treasurer, United States of America." The check shall reference on its face the name of Respondent and the Docket Number of this CA/FO. Such payment shall be tendered to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

24. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CA/FO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and

Ms. Mary Mattox
U.S. Environmental Protection Agency, Region 4
Water Protection Division
Clean Water Enforcement Branch
Municipal and Industrial Enforcement Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

25. The penalty amount specified in Paragraph 22 above shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of federal taxes.

26. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by the Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject the Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CA/FO), attorney's fees, costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty per cent (20%) of the aggregate amount of such penalty and nonpayment penalty which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount and appropriateness of the penalty and of this CA/FO shall not be subject to review.

V. GENERAL PROVISIONS

27. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit. Other than as expressed herein, compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the EPA.

28. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Respondent's violation of this CA/FO or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any federal or state statute, regulation or permit. The EPA shall not seek further corrective action or payment for the violations alleged in this CA/FO, if the Respondent complies with the payment required under Section IV of this CA/FO.

29. Except as otherwise set forth herein, this CA/FO constitutes a final settlement by Complainant and Respondent of all claims for civil penalties pursuant to the CWA with respect to only those violations alleged in this CA/FO. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent, or other liability resulting from violations that were not alleged in this CA/FO. Other than as expressed herein,

Complainant does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

30. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.

31. This CA/FO applies to and is binding upon Respondent and its officers, directors, employees, agents, successors and assigns.

32. Any change in the legal status of Respondent including, but not limited to, any transfer of assets of real or personal property, shall not alter Respondent's responsibilities under this CA/FO.

33. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.

34. In accordance with 40 C.F.R. § 22.5, the individuals below are authorized to receive service relating to this proceeding.

For Complainant:

Kavita K. Nagrani
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9697

For Respondent:

Richard Owens
President
ABC Coke Division
Railroad Street
Birmingham, Alabama 35202

With a copy to:

Blake Andrews
Assistant General Counsel
1000 Urban Center Drive
Birmingham, Alabama 35242

35. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(e)(4), which provides a right to petition to set aside a Consent Agreement and proposed Final Order based on comments received during the public comment period.

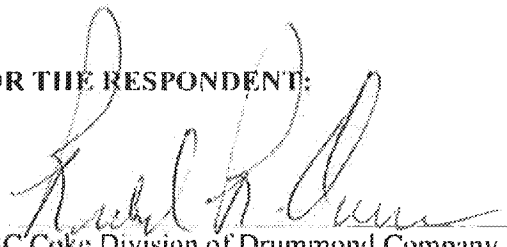
36. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. §22.38(b), Complainant represents that the State of Alabama was provided a prior opportunity to consult with Complainant regarding this matter.

37. Effective upon signature of this CA/FO by Respondent, Respondent agrees that the time period commencing on the date of its signature and ending on the date the EPA receives from Respondent the payment required by this CA/FO shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the EPA related to the matters addressed in this CA/FO and that, in any action brought by the EPA related to the matters addressed, Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Respondent that it will not make this CA/FO effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by the EPA.

VI. EFFECTIVE DATE

38. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

FOR THE RESPONDENT:


ABC Coke Division of Drummond Company, Inc.
Richard Owens
President

Date: 8/13/14

**FOR THE U.S. ENVIRONMENTAL
PROTECTION AGENCY**

Denisse D. Diaz, Chief
Clean Water Enforcement Branch
Water Protection Division
U.S. EPA Region 4

Date:

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:

**ABC Coke Division
The Drummond Company
Birmingham, Alabama**

Respondent.

)
) **CONSENT AGREEMENT AND**
) **FINAL ORDER**
)
)
) **Docket No.: CWA-04-2014-4507(b)**
)

FINAL ORDER

In accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, including Subpart I, 40 C.F.R. Part 22, and authorities delegated to me, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: _____

Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached Consent Agreement and Final Order in the matter of **ABC Coke Division of the Drummond Company**, Birmingham, Alabama, Docket No. CWA-04-2014-4507(b) (filed with the Regional Hearing Clerk on _____, 2014) was served on _____, 2014, in the manner specified to each of the persons listed below.

By hand-delivery: Kavita K. Nagrani
Associate Regional Counsel
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, GA 30303

By certified mail,
return receipt requested: Richard Owens
President
ABC Coke Division
Railroad Street
Birmingham, Alabama 35202

Blake Andrews
Assistant General Counsel
ABC Coke Division
1000 Urban Center Drive
Birmingham, Alabama 35242

Glenda L. Dean, Chief
Water Division
Alabama Department of Environmental Management
P. O. Box 301463
Birmingham, Alabama 36130-1463

Ms. Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, GA 30303
(404) 562-9511